IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.373 of 2005
RAMJI RAI
Versus
STATE OF BIHAR & ORS
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7. 7.8.2008. Heard the learned counsel for the petitioner as well as the opposite party.

It appears from the record that the petitioner Ramji Rai lodged fardbeyan against 11 persons including these opposite parties before Phulwarisharif (Gaurichak Police Station), who registered case against them under various sections including sections 302 and 307 I.P.C. The police after investigation submitted charge sheet against six persons and final against these opposite parties. However, the learned C.J.M. vide order dated 14.10.2004 after taking cognizance issued processes against all the 11 accused persons including these opposite parties.

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It further appears that the opposite parties preferred criminal revision before the Sessions Judge, Patna which was ultimately heard by 6th Additional Sessions Judge, Patna. The learned Additional Sessions Judge vide order dated 19.4.2005 set aside the order of cognizance taken against the opposite parties on the basis of decision of the Supreme Court reported in A.I.R. 2001(1)Supreme Court 72.

In course of the submission, the learned counsel for the petitioner submits that after the decision rendered in the above referred case, in several decision the Apex Court have clearly held that the Magistrate has power to take cognizance and issue process even

against those accused persons who have not been charge sheeted or shown as not sent up. In support of the above submission, the learned lawyer has relied upon some recent decision of the Supreme Court reported in 2004(7)SCC 678, 2006(4)SCC 359 and 1967 Supreme Court 1167.

On the other hand, the learned counsel for the opposite party tried to distinguish the decisions referred by the learned counsel for the petitioner and submitted that in such nature of cases, the learned Magistrate has no power to issue summons against non-charge sheeted accused. The only course open for the prosecution to array such accused persons under section 319 of the Cr.P.C.

Considered the submission of the learned counsel for both the parties as also the various decisions cited by both the parties. The latest decision is of the year 2006 reported in 2006(4)SCC 359 (Minu Kumari and another vrs. State of Bihar and others). In paragraph-11 of the judgment, the Hon'ble Apex Court has held as follows :

> "11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further

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investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an

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opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also."

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In above decisions, reliance has also been placed over the above cited decision Reported in 2004(7)SCC 768.

Thus, having regard to the facts and circumstances of the case as well as the law laid down by the Apex Court, I am of the view that the learned Sessions Judge has not correctly appreciated the law. It has wrongly set aside the order of cognizance taken against opposite party nos.2 to 5 by the C.J.M.

Accordingly, this revision is allowed and the impugned order is hereby set aside.

( Ghanshyam Prasad )

N.H./

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